

Todd M. Friedman (SBN 216752)
 Adrian R. Bacon (SBN 280332)
 Meghan E. George (SBN 274525)
 Thomas E. Wheeler (SBN 308789)
 LAW OFFICES OF TODD M. FRIEDMAN, P.C.
 21550 Oxnard St., Suite 780
 Woodland Hills, CA 91367
 Phone: 877-206-4741
 Fax: 866-633-0228
 tfriedman@ toddflaw.com
 abacon@ toddflaw.com
 mgeorge@ toddflaw.com
 twheeler@ toddflaw.com
Attorneys for Plaintiff

**UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA**

ABANTE ROOTER AND PLUMBING) Case No.		
INC, individually and on behalf of all)		
others similarly situated,)		<u>CLASS ACTION</u>
Plaintiff,)		
vs.)		COMPLAINT FOR VIOLATIONS
FLOODLOCAL.COM; and DOES 1)		OF:
through 10, inclusive,)		1. NEGLIGENT VIOLATIONS
Defendant.)		OF THE TELEPHONE
)		CONSUMER PROTECTION
)		ACT [47 U.S.C. §227(b)]
)		2. WILLFUL VIOLATIONS
)		OF THE TELEPHONE
)		CONSUMER PROTECTION
)		ACT [47 U.S.C. §227(b)]
)		<u>DEMAND FOR JURY TRIAL</u>

Plaintiff ABANTE ROOTER AND PLUMBING INC (“Plaintiff”), individually and on behalf of all others similarly situated, alleges the following upon information and belief based upon personal knowledge:

1 **NATURE OF THE CASE**

2 1. Plaintiff brings this action individually and on behalf of all others
3 similarly situated seeking damages and any other available legal or equitable
4 remedies resulting from the illegal actions of Defendant, FLOODLOCAL.COM
5 (“Defendant”), in negligently, knowingly, and/or willfully contacting Plaintiff on
6 Plaintiff’s cellular telephone in violation of the Telephone Consumer Protection
7 Act, 47 U.S.C. § 227 *et seq.* (“TCPA”), thereby causing Plaintiff to incur unwanted
8 and unnecessary charges and invading Plaintiff’s privacy.

9 **JURISDICTION & VENUE**

10 2. Jurisdiction is proper under 28 U.S.C. § 1332(d)(2) because Plaintiff,
11 a California corporation with its principle place of business also in California, seeks
12 relief on behalf of a Class, which will result in at least one class member belonging
13 to a different state than that of Defendant, a Nevada company. Plaintiff also seeks
14 up to \$1,500.00 in damages for each call in violation of the TCPA, which, when
15 aggregated among a proposed class in the thousands, exceeds the \$5,000,000.00
16 threshold for federal court jurisdiction. Therefore, both diversity jurisdiction and
17 the damages threshold under the Class Action Fairness Act of 2005 (“CAFA”) are
18 present, and this Court has jurisdiction.

19 3. Venue is proper in the United States District Court for the Central
20 District of California pursuant to 28 U.S.C. § 1391(b)(2) because Defendant does
21 business within the State of California and Plaintiff resides within the County of
22 Alameda.

23 **PARTIES**

24 4. Plaintiff, ABANTE ROOTER AND PLUMBING INC (“Plaintiff”),
25 is a rooting and plumbing business in Emeryville, California and is a “person” as
26 defined by 47 U.S.C. § 153 (39).

27 5. Defendant, 411 LOCALS (“Defendant”), is a flood prevention and
28 damage servicer, and is a “person” as defined by 47 U.S.C. § 153 (39).

1 6. The above named Defendant, and its subsidiaries and agents, are
2 collectively referred to as “Defendants.” The true names and capacities of the
3 Defendants sued herein as DOE DEFENDANTS 1 through 10, inclusive, are
4 currently unknown to Plaintiff, who therefore sues such Defendants by fictitious
5 names. Each of the Defendants designated herein as a DOE is legally responsible
6 for the unlawful acts alleged herein. Plaintiff will seek leave of Court to amend the
7 Complaint to reflect the true names and capacities of the DOE Defendants when
8 such identities become known.

9 7. Plaintiff is informed and believes that at all relevant times, each and
10 every Defendant was acting as an agent and/or employee of each of the other
11 Defendants and was acting within the course and scope of said agency and/or
12 employment with the full knowledge and consent of each of the other Defendants.
13 Plaintiff is informed and believes that each of the acts and/or omissions complained
14 of herein was made known to, and ratified by, each of the other Defendants.

15 **FACTUAL ALLEGATIONS**

16 8. Beginning in or around February of 2016 and continuing through
17 March of 2016, Defendant contacted Plaintiff on Plaintiff’s cellular telephone
18 numbers ending in -3803 in an attempt to solicit Plaintiff to purchase Defendants’
19 services.

20 9. Defendants contacted or attempted to contact Plaintiff from telephone
21 numbers belonging to Defendants, including without limitation (725) 333-9706 and
22 (720) 445-7324.

23 10. Defendants used an “automatic telephone dialing system” as defined
24 by 47 U.S.C. § 227(a)(1) to place its calls to Plaintiff seeking to solicit its services.

25 11. Furthermore, at one or more instance during these calls, Defendant
26 utilized an “artificial or prerecorded voice” as prohibited by 47 U.S.C. §
27 227(b)(1)(A).

28 12. Defendant’s calls constituted calls that were not for emergency

1 purposes as defined by 47 U.S.C. § 227(b)(1)(A).

2 13. Defendant's calls were placed to telephone number assigned to a
3 cellular telephone service for which Plaintiff incurs a charge for incoming calls
4 pursuant to 47 U.S.C. § 227(b)(1).

5 14. Plaintiff is not a customer of Defendant's services and has never
6 provided any personal information, including his telephone number, to Defendant
7 for any purpose whatsoever.

8 15. During all relevant times, Defendant did not possess Plaintiff's "prior
9 express consent" to receive calls using an automatic telephone dialing system or an
10 artificial or prerecorded voice on its cellular telephones pursuant to 47 U.S.C. §
11 227(b)(1)(A).

12 16. Defendant placed multiple calls soliciting its business to Plaintiff on
13 its cellular telephones beginning in or around April of 2016 and continued until in
14 or around June of 2016.

15 17. Such calls constitute solicitation calls pursuant to 47 C.F.R. §
16 64.1200(c)(2) as they were attempts to promote or sell Defendant's services.

17 18. Plaintiff received numerous solicitation calls from Defendant within a
18 12-month period.

19 19. Plaintiff requested for Defendant to stop calling Plaintiff during one
20 of the initial calls from Defendant, thus revoking any prior express consent that had
21 existed and terminating any established business relationship that had existed, as
22 defined under 16 C.F.R. 310.4(b)(1)(iii)(B).

23 20. Upon information and belief, and based on Plaintiff's experiences of
24 being called by Defendant after requesting they stop calling, and at all relevant
25 times, Defendant failed to establish and implement reasonable practices and
26 procedures to effectively prevent telephone solicitations in violation of the
27 regulations prescribed under 47 U.S.C. § 227(c)(5).

CLASS ALLEGATIONS

21. Plaintiff brings this action individually and on behalf of all others similarly situated, as a member the two proposed classes (hereafter, jointly, “The Classes”). The class concerning the ATDS claim for no prior express consent (hereafter “The ATDS Class”) is defined as follows:

All persons within the United States who received any solicitation/telemarketing telephone calls from Defendant to said person’s cellular telephone made through the use of any automatic telephone dialing system or an artificial or prerecorded voice and such person had not previously consented to receiving such calls within the four years prior to the filing of this Complaint

22. The class concerning the ATDS claim for revocation of consent, to the extent prior consent existed (hereafter “The ATDS Revocation Class”) is defined as follows:

All persons within the United States who received any solicitation/telemarketing telephone calls from Defendant to said person’s cellular telephone made through the use of any automatic telephone dialing system or an artificial or prerecorded voice and such person had revoked any prior express consent to receive such calls prior to the calls within the four years prior to the filing of this Complaint.

23. Plaintiff represents, and is a member of, The ATDS Class, consisting of all persons within the United States who received any solicitation telephone calls from Defendant to said person’s cellular telephone made through the use of any automatic telephone dialing system or an artificial or prerecorded voice and such person had not previously not provided their cellular telephone number to Defendant within the four years prior to the filing of this Complaint.

1 24. Plaintiff represents, and is a member of, The ATDS Revocation Class,
2 consisting of all persons within the United States who received any
3 solicitation/telemarketing telephone calls from Defendant to said person's cellular
4 telephone made through the use of any automatic telephone dialing system or an
5 artificial or prerecorded voice and such person had revoked any prior express
6 consent to receive such calls prior to the calls within the four years prior to the
7 filing of this Complaint.

8 25. Defendant, their employees and agents are excluded from The
9 Classes. Plaintiff does not know the number of members in The Classes, but
10 believes the Classes members number in the thousands, if not more. Thus, this
11 matter should be certified as a Class Action to assist in the expeditious litigation of
12 the matter.

13 26. The Classes are so numerous that the individual joinder of all of its
14 members is impractical. While the exact number and identities of The Classes
15 members are unknown to Plaintiff at this time and can only be ascertained through
16 appropriate discovery, Plaintiff is informed and believes and thereon alleges that
17 The Classes includes thousands of members. Plaintiff alleges that The Classes
18 members may be ascertained by the records maintained by Defendant.

19 27. Plaintiff and members of The ATDS Class and The ATDS Revocation
20 Class were harmed by the acts of Defendant in at least the following ways:
21 Defendant illegally contacted Plaintiff and ATDS Class members via their cellular
22 telephones thereby causing Plaintiff and ATDS Class and ATDS Revocation Class
23 members to incur certain charges or reduced telephone time for which Plaintiff and
24 ATDS Class and ATDS Revocation Class members had previously paid by having
25 to retrieve or administer messages left by Defendant during those illegal calls, and
26 invading the privacy of said Plaintiff and ATDS Class and ATDS Revocation Class
27 members.

28 28. Common questions of fact and law exist as to all members of The

1 ATDS Class which predominate over any questions affecting only individual
 2 members of The ATDS Class. These common legal and factual questions, which
 3 do not vary between ATDS Class members, and which may be determined without
 4 reference to the individual circumstances of any ATDS Class members, include,
 5 but are not limited to, the following:

- 6 a. Whether, within the four years prior to the filing of this
 7 Complaint, Defendant made any telemarketing/solicitation call
 8 (other than a call made for emergency purposes or made with
 9 the prior express consent of the called party) to a ATDS Class
 10 member using any automatic telephone dialing system or any
 11 artificial or prerecorded voice to any telephone number
 12 assigned to a cellular telephone service;
- 13 b. Whether Plaintiff and the ATDS Class members were damaged
 14 thereby, and the extent of damages for such violation; and
- 15 c. Whether Defendant and their agents should be enjoined from
 16 engaging in such conduct in the future.

17 29. As a person that received numerous telemarketing/solicitation calls
 18 from Defendant using an automatic telephone dialing system or an artificial or
 19 prerecorded voice, without Plaintiff's prior express consent, Plaintiff is asserting
 20 claims that are typical of The ATDS Class.

21 30. Common questions of fact and law exist as to all members of The
 22 ATDS Revocation Class which predominate over any questions affecting only
 23 individual members of The ATDS Revocation Class. These common legal and
 24 factual questions, which do not vary between ATDS Revocation Class members,
 25 and which may be determined without reference to the individual circumstances of
 26 any ATDS Revocation Class members, include, but are not limited to, the
 27 following:

- 28 a. Whether, within the four years prior to the filing of this

1 Complaint, Defendant made any telemarketing/solicitation call
2 (other than a call made for emergency purposes or made with
3 the prior express consent of the called party) to an ATDS
4 Revocation Class member, who had revoked any prior express
5 consent to be called using an ATDS, using any automatic
6 telephone dialing system or any artificial or prerecorded voice
7 to any telephone number assigned to a cellular telephone
8 service;

9 b. Whether Plaintiff and the ATDS Revocation Class members
10 were damaged thereby, and the extent of damages for such
11 violation; and

12 c. Whether Defendant and their agents should be enjoined from
13 engaging in such conduct in the future.

14 31. As a person that received numerous telemarketing/solicitation calls
15 from Defendant using an automatic telephone dialing system or an artificial or
16 prerecorded voice, after Plaintiff had revoked any prior express consent, Plaintiff
17 is asserting claims that are typical of The ATDS Revocation Class.

18 32. Plaintiff will fairly and adequately protect the interests of the members
19 of The Classes. Plaintiff has retained attorneys experienced in the prosecution of
20 class actions.

21 33. A class action is superior to other available methods of fair and
22 efficient adjudication of this controversy, since individual litigation of the claims
23 of all Classes members is impracticable. Even if every Classes member could
24 afford individual litigation, the court system could not. It would be unduly
25 burdensome to the courts in which individual litigation of numerous issues would
26 proceed. Individualized litigation would also present the potential for varying,
27 inconsistent, or contradictory judgments and would magnify the delay and expense
28 to all parties and to the court system resulting from multiple trials of the same

1 complex factual issues. By contrast, the conduct of this action as a class action
2 presents fewer management difficulties, conserves the resources of the parties and
3 of the court system, and protects the rights of each Classes member.

4 34. The prosecution of separate actions by individual Classes members
5 would create a risk of adjudications with respect to them that would, as a practical
6 matter, be dispositive of the interests of the other Classes members not parties to
7 such adjudications or that would substantially impair or impede the ability of such
8 non-party Class members to protect their interests.

9 35. Defendant have acted or refused to act in respects generally applicable
10 to The Classes, thereby making appropriate final and injunctive relief with regard
11 to the members of the Classes as a whole.

12 **FIRST CAUSE OF ACTION**

13 **Negligent Violations of the Telephone Consumer Protection Act**

14 **47 U.S.C. §227(b).**

15 **On Behalf of the ATDS Class and ATDS Revocation Class**

16 36. Plaintiff repeats and incorporates by reference into this cause of action
17 the allegations set forth above at Paragraphs 1-35.

18 37. The foregoing acts and omissions of Defendant constitute numerous
19 and multiple negligent violations of the TCPA, including but not limited to each
20 and every one of the above cited provisions of *47 U.S.C. § 227(b)*, and in particular
21 *47 U.S.C. § 227 (b)(1)(A)*.

22 38. As a result of Defendant' negligent violations of *47 U.S.C. § 227(b)*,
23 Plaintiff and the Class Members are entitled an award of \$500.00 in statutory
24 damages, for each and every violation, pursuant to *47 U.S.C. § 227(b)(3)(B)*.

25 39. Plaintiff and the ATDS Class and ATDS Revocation Class members
26 are also entitled to and seek injunctive relief prohibiting such conduct in the future.

27 ///

SECOND CAUSE OF ACTION

Knowing and/or Willful Violations of the Telephone Consumer Protection Act

47 U.S.C. §227(b)

On Behalf of the ATDS Class and the ATDS Revocation Class

40. Plaintiff repeats and incorporates by reference into this cause of action the allegations set forth above at Paragraphs 1-35.

41. The foregoing acts and omissions of Defendant constitute numerous and multiple knowing and/or willful violations of the TCPA, including but not limited to each and every one of the above cited provisions of *47 U.S.C. § 227(b)*, and in particular *47 U.S.C. § 227 (b)(1)(A)*.

42. As a result of Defendant's knowing and/or willful violations of *47 U.S.C. § 227(b)*, Plaintiff and the ATDS Class and ATDS Revocation Class members are entitled an award of \$1,500.00 in statutory damages, for each and every violation, pursuant to *47 U.S.C. § 227(b)(3)(B)* and *47 U.S.C. § 227(b)(3)(C)*.

43. Plaintiff and the Class members are also entitled to and seek injunctive relief prohibiting such conduct in the future.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests judgment against Defendant for the following:

FIRST CAUSE OF ACTION

Negligent Violations of the Telephone Consumer Protection Act

47 U.S.C. §227(b)

- As a result of Defendant's negligent violations of *47 U.S.C. §227(b)(1)*, Plaintiff and the ATDS Class and ATDS Revocation Class members are entitled to and request \$500 in statutory damages, for each and every violation, pursuant to *47 U.S.C. 227(b)(3)(B)*.
- Any and all other relief that the Court deems just and proper.

SECOND CAUSE OF ACTION

Knowing and/or Willful Violations of the Telephone Consumer Protection Act

47 U.S.C. §227(b)

- As a result of Defendant' willful and/or knowing violations of 47 U.S.C. §227(b)(1), Plaintiff and the ATDS Class and ATDS Revocation Class members are entitled to and request treble damages, as provided by statute, up to \$1,500, for each and every violation, pursuant to 47 U.S.C. §227(b)(3)(B) and 47 U.S.C. §227(b)(3)(C).
- Any and all other relief that the Court deems just and proper.

JURY DEMAND

44. Pursuant to the Seventh Amendment to the Constitution of the United States of America, Plaintiff is entitled to, and demands, a trial by jury.

Respectfully Submitted this 21st Day of July, 2017.

LAW OFFICES OF TODD M. FRIEDMAN, P.C.

By: /s/ Todd M. Friedman
Todd M. Friedman
Law Offices of Todd M. Friedman
Attorney for Plaintiff